



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 10**  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

**JAN 23 2014**

**OFFICE OF  
COMPLIANCE AND ENFORCEMENT**

Reply To: OCE-133

**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

**REQUEST FOR INFORMATION**

Dean Marriott  
Director  
Bureau of Environmental Services  
City of Portland  
1120 SW 5<sup>th</sup> Avenue, Room 1000  
Portland, Oregon 97204

Re: Portland, Oregon Municipal Separate Storm Sewer System  
(NPDES Permit No. ORS101314)

Dear Mr. Marriott:

On April 15 through 19, 2013, the U.S. Environmental Protection Agency (EPA) conducted an inspection of the City of Portland (City) Municipal Separate Storm Sewer System (MS4), including the City's storm water management program (SWMP), to evaluate compliance with the City's National Pollutant Discharge Elimination System (NPDES) Permit, Permit Number ORS101314 (Permit).

This letter requests information and documents relating to the City's MS4. Pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318, the EPA, through the Director of the Office of Compliance and Enforcement, and upon the basis of available information, requests you to respond to the enclosed Request for Information (Request) (Enclosure 2).

Please respond to this Request in accordance with the Instructions and Definitions (Enclosure 1) provided with the Request. Answer each question as clearly and completely as possible, and provide all documents and other information requested. Your response to this Request must be accompanied by a certification that is signed and dated by you or the person who is authorized by you to respond to the Request. A Statement of Certification is included with this letter (Enclosure 3).

Failure to provide a complete and truthful response to this Request within thirty (30) days of your receipt of this letter, or to adequately justify such failure to respond, may subject you to enforcement pursuant to Section 309 of the CWA, 33 U.S.C. § 1319 that may include penalties of up to \$37,500 per day of violation. Please note that responses that are incomplete, ambiguous, or evasive may be treated as non-compliance with this Request. Provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001.

**Please submit your written response no later than the deadlines indicated to:**

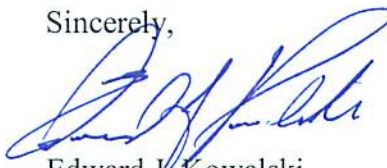
Original to: Christine Alvarez  
U.S. Environmental Protection Agency  
National Enforcement Investigations Center  
Denver Federal Center  
Building 25/Door E-3, P.O. Box 25227  
Denver, CO 80225

Copy to: Robert Grandinetti  
U.S. Environmental Protection Agency  
NPDES Compliance Unit  
309 Bradley Boulevard, Suite 115  
Richland, WA 99352

If you have any questions concerning this request, please contact Robert Grandinetti at (509) 376-3748 or have your attorneys contact Ted Yackulic, with the Office of Regional Counsel, at (206) 553-1218.

Thank you for your cooperation in this matter.

Sincerely,



Edward J. Kowalski  
Director

Enclosures

1. Instructions and Definitions
2. Request for Information
3. Statement of Certification

cc w/enc: Greg Aldrich  
Oregon Department of Environmental Quality

Benjamin Benninghoff  
Oregon Department of Environmental Quality

**INSTRUCTIONS AND DEFINITIONS****I. Instructions**

1. **Answer Each Question Completely.** Provide a separate answer to each question and subpart set forth in this Request for Information. Responses must be for the relevant time period, January 1, 2010 to present.
2. **Response Format and Copies.** Provide the responses to this Request for Information and at least one copy of all requested documents, either electronically or on paper (hard copy). Each response in your submission, whether electronic or hard copy, must indicate the question or questions to which it is responding and must identify all persons and documents relied upon for the answer. Regardless of the format of your responses, the Statement of Certification must be provided in hard copy with an original signature.

When providing your response electronically, you must also submit responses in Portable Document Format (PDF), text-searchable if possible; and electronic documents shall retain their original dimensions. Any documents originally larger than 11 x 17 must be submitted in hard copy.

3. **Provide the best information available.** Provide responses to the best of your knowledge and ability, even if the information sought was never put down in writing or if the written documents are no longer available. Seek out responsive information from current and former employees/agents. If your responses are qualified in any manner, please explain. Submission of cursory responses when other responsive information is available to you will be considered noncompliance with this Request for Information. If information or documents not known or not available to you as of the date of submission of your response to this request should later become known or available to you, you must immediately supplement your response to EPA. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is false or misrepresents the truth, you must immediately notify EPA of this fact and provide a corrected response.
4. **Certification.** You must complete the enclosed Statement of Certification, certifying the accuracy of all statements in your response.

**II. Definitions**

All terms not defined herein shall have their ordinary meaning, unless such terms are defined in the CWA, 33 U.S.C. § 1251, et seq., in the regulations at 40 C.F.R. Part 122, or in the NPDES General Permit for Stormwater Discharges From Construction Activities ("CGP"), in which case the statutory, regulatory, or permit definitions shall apply.

The following definitions shall apply to the following words as they appear in this Enclosure:

1. The City of Portland is permitted by the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Discharge Permit No. ORS101314, which covers all existing and new discharges of storm water from the MS4 within the City of Portland Urban Services boundary. The following Section 308 questions pertain to the referenced MS4 Permit and its implementation.

2. For the NPDES MS4 Discharge Permit No. ORS101314 definition of an MS4 is the following: MS4 “means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):
  - a. Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of sewage, industrial wastes, storm water or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian Tribal organization, or a designated and approved management agency under §208 of the CWA that discharges to waters of the United States;
  - b. Designed or used for collection or conveying storm water;
  - c. Which is not a combined sewer; and
  - d. Which is not part of a Publicly Owned Treatment Works (POTW) as defined by 40 CFR §122.2.”
3. Unless otherwise specified, all questions listed should include the following time frame: January 1, 2010 through Present.
4. The term “City” and “you” shall mean the City of Portland, including its officers, directors, managers and staff.
5. The term “person” shall have the same definition as in Section 502(5) of the CWA.
6. The term “Adaptive Management” shall mean a structured, iterative process designed to refine and improve storm water programs over time by evaluating results and adjusting actions on the basis of what has been learned.
7. The term “Construction Sites/Projects” shall mean land disturbance activities of 500 square feet or greater associated with construction site runoff control regulated under the permit to prevent adverse impacts to water quality and minimize the transport of construction-related contaminants to waters.
8. The terms “document,” “documents,” and “copy(ies)” shall mean any method of recording, storing, or transmitting information, whether on paper or in electronic form, including, but not limited to:
  - a. Writings of any kind, including, but not limited to: any invoice; receipt; correspondence; memorandum; calendar; notebook; bank statement; report; letter; fax transmittal; meeting minutes; agreements and contracts; reports to or from the Respondent; graphs; charts; photocopies; surveys; blueprints; drawings; maps or plans; and any, photograph; and
  - b. All copies of such document(s) which are different from the original, including drafts, and attachments to or enclosures with any document.
9. The term “identify” means, with respect to a natural person, to provide: (a) the person’s full name, (b) present or last known business and home addresses and telephone numbers; and (c) present or last known employer (include full name and address) with job title, position, and business.
10. The term “identify” means, with respect to a corporation, partnership, business trust, or other entity, to provide: (a) its full name; (b) complete street address; (c) legal form (e.g., corporation, partnership, etc.); (d) the state under whose laws the entity was organized; and (e) a brief description of its business.

11. The term “identify” means, with respect to a document, to provide: (a) its customary business description (e.g., letter, invoice); (b) its date; (c) its number if applicable (e.g., invoice or purchase order number); (d) the identity of the author, addressee, and/or recipient; and (e) a complete copy of the document.
12. The term “illicit discharge” shall mean any discharge to a municipal separate storm sewer system that is not composed entirely of storm water except discharges authorized under Section A.4.a.xii, (non-stormwater discharges) discharges permitted by a NPDES permit or other state or federal permit, or otherwise authorized by the ODEQ.
13. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope.

### **III. Acronyms**

1. 1200-C – Oregon Department of Environmental Quality’s Construction Stormwater General Permit
2. Adaptive Management – A structured, iterative process designed to refine and improve storm water programs over time by evaluating results and adjusting actions on the basis of what has been learned.
3. Portland Bureau of Environmental Services – BES
4. Portland Bureau of Development Services – BDS
5. City – City of Portland
6. City MS4 implementation staff – all entities, bureaus, organization units, contractors, and staff that implement parts of the City’s MS4 permit.
7. Construction Sites/Projects –land disturbance activities of 500 square feet or greater associated with construction site runoff control regulated under the permit to prevent adverse impacts to water quality and minimize the transport of construction-related contaminants to waters.
8. Construction Site Runoff Control Program – Construction
9. Discharge Authorizations - DA
10. Environmental Manager - EM
11. Erosion Control Plan - ECP
12. Illicit Discharge Elimination Program – IDEP
13. Municipal Separate Storm Sewer System - MS4
14. National Enforcement Investigation Center - NEIC
15. National Pollutant Discharge Elimination System - NPDES
16. NPDES MS4 Discharge Permit No. ORS101314 – NPDES permit
17. Oregon Department of Environmental Quality – ODEQ
18. Portland Bureau of Transportation – PBOT
19. Portland Fire and Rescue – PFR
20. Port of Portland – Port
21. Portland Parks and Recreation – PPR
22. Storm Water Management Plan – SWMP
23. Portland Water Bureau – WB

**REQUEST FOR INFORMATION****General Questions**

1. List and describe in detail all of the City MS4 implementation staff (including entities, bureaus, or other organizational units) that have a role in the implementation of the NPDES permit. Include a clear delineation of all permit implementation roles and responsibilities, with individual names of all staff members responsible for implementing the MS4 permit program elements. The response provided should include a detailed description of BES, BDS, WB, PBOT, PPR, PFR, drainage districts, Port of Portland, and any and all other staff responsible for any aspect of the MS4 permit implementation. Be sure to include in the response all permit-mandated MS4 program elements and how each element is covered. For example, you must include all City MS4 implementation staff involved in construction site runoff control, including plan development, plan review, plan acceptance or denial, site inspections, and enforcement, for both public and private construction projects.
2. Describe in detail how communication or delegation of responsibility occurs between bureaus, all MS4 implementation staff, or other organizations (e.g., contractors, etc.) that support the City's MS4 program, in order to ensure adequate MS4 program implementation across all programs and responsible entities. For example, if the IDEP program identifies an issue such as a broken sewer pipe (e.g., broken line or seepage) or a construction site (e.g., sediment discharging into the MS4 system), how is this information relayed/transferred to another bureau?
3. List and describe every database used to track, maintain, or store information relevant to the MS4 permit requirements. Explain in detail what data is entered, what data is tracked or referenced, and who is responsible for the accuracy, tracking, and maintenance of the databases. For example, when a citizen complaint is received or when one bureau requests or communicates to another bureau (e.g., BES communicates with BDS) to initiate a work order, how does the information get tracked, how are work orders/referrals initiated, and how are tasks managed using the databases? Explain how the bureaus use the databases to prioritize work orders and assign the work order to fix a problem. Also, what, if any, other departments have access to these databases?
4. Provide a copy of the City's adaptive management approach that should have been submitted to ODEQ on November 1, 2011 (Schedule D, 4. Adaptive Management).

**Illicit Discharge Disposal and Elimination**

5. On page 6 of the *Spill Protection and Citizen Response Duty Officer Procedures*, it is stated that procedures for the inspection and sampling of dry weather outfalls are not

included in this document. Does the City MS4 program have a written dry weather monitoring procedure? If so, provide a copy of this procedure. If not, provide any documentation that describes or supports dry weather monitoring investigation, elimination, and enforcement.

6. Explain in detail how the EM responsible for the dry weather monitoring determines the nature and composition of a dry weather or illicit discharge into the City's dry weather monitoring and priority outfalls. Include the criteria or information the EM uses to determine the nature (e.g., smell/odor, discharge condition, consistency, color, amount of discharge, flow) and composition (e.g., elevated action level/bench mark) of the dry weather or illicit discharge; what procedures or techniques are used; and what sampling or monitoring is performed (e.g., actions levels) to determine the nature and composition of the dry weather or illicit discharge.
7. Once the EM responsible for dry weather monitoring has determined the nature and composition of the dry weather or illicit discharge, explain in detail when and how the EM decides to investigate the source of the dry weather or illicit discharge. Explain when the EM decides that an investigation of the discharge is necessary, what information the EM records for the investigation, what procedure or steps the EM follows to perform the investigation, and what the EM evaluates during the investigation. Provide any supporting documentation.
8. Describe the criteria or decision process that the EM uses to decide if the dry weather discharge is an illicit discharge or a non-stormwater discharge.
9. Once the EM's investigation of the dry weather or illicit discharge has commenced, explain what steps or procedure the EM uses to determine whether the dry weather or illicit discharge should be removed or eliminated. Include a detailed explanation or procedure that describes all the steps from identification of the discharge source to elimination of illicit discharge. In addition, include details on any individuals, groups, organizations or agencies that assist in removal of the illicit discharge, their role in eliminating the illicit discharge, and the kind of information that is maintained to document the elimination process.
10. Once the EM has determined that the illicit discharge should be eliminated and has identified the party responsible for the illicit discharge, explain the steps the EM takes to contact the responsible party (e.g., person, group, or industrial or commercial facility). Provide a detailed explanation of the steps the EM takes to communicate with the responsible party about an illicit discharge, and include any documentation that supports this explanation.
11. Provide an electronic copy (in .xls or .xlsx) of a comprehensive Microsoft Excel electronic spreadsheet that includes the following information on outfalls 8, 22, 22B, and

- 53B: outfall number and location, sampling and inspection dates, sampling parameters, analytical results for all parameters each time the outfalls were sampled, whether or not further investigation was performed on the outfalls if action levels were exceeded, the name and/or description of the identified source of discharge, the responsible party, and whether or not the responsible party was contacted or enforcement was initiated.
12. For question 28, provide any supporting documentation such as emails, memos, forms, notifications, or laboratory results that detail the actions were taken once an exceeded action level/benchmark was identified.
  13. Please provide the inspection form for the dry weather/priority outfall 53B. The inspection forms provided by the City for dry weather/priority outfalls 22 and 22B state that the type of land use is industrial/commercial. Provide a map for each outfall; 22, 22B, and 53B, that clearly indicates the outfall location, all facilities that drain and discharge into these outfalls, and the associated MS4 pipe systems.
  14. Provide an electronic copy (in .xls or .xlsx) of a comprehensive Microsoft Excel electronic spreadsheet that includes a list of all the dry weather monitoring outfalls and priority outfalls (not listed in question 28) and monitored since 1/31/2011. Include the following information for each dry weather/priority outfall: outfall number and location, sampling or inspection dates, sampling parameters, analytical results for all parameters monitored each time the outfalls were sampled, whether or not further investigation was performed on the outfall if action levels were exceeded, the name and a description of the identified source of discharge, the responsible party, and whether or not the responsible party was contacted or enforcement was initiated.
  15. The SWMP states the IDEP strategy includes the following element: tracking storm water outfalls added or removed from the system. Describe in detail how the City's MS4 program tracks storm water outfalls added or removed from the MS4 system. Provide documentation to support how IDEP tracks or removes outfalls from the MS4 system.
  16. Do you have an enforcement response plan or a similar document that includes the rationale for using the action levels during enforcement proceedings? If so, describe and provide a copy of the document.
  17. Are IDEP's field screening thresholds the same as the IDEP action limits provided during the NEIC inspection in April 2013? If so, describe how these action levels are used to support and assess the City's MS4 program.

### **Construction Site Runoff Control**

18. 1200-C
  - a. Does anyone working to implement the City's MS4 permit inspect construction sites for 1200-C permit requirements?



- b. If 1200-C inspections are performed by City MS4 implementation staff, how frequently are they performed, what is inspected, and by whom?
- c. If 1200-C inspections are performed by City MS4 implementation staff, are those inspections' reports and/or observations provided to ODEQ, and does ODEQ ever request information from City MS4 implementation staff or shadow them as part of the oversight process?

#### 19. Construction Site Inventory

- a. Provide an electronic copy (in .xls or .xlsx) of a comprehensive Microsoft Excel electronic spreadsheet that includes all public construction sites for April 2013, covered under the construction site runoff control element of the MS4 permit. The list must include each project name, the extent of disturbance, the date of disturbance, the type of project, the site address, the status of the inspection process, and a reason why each site is regulated by the MS4 permit, with each on-site and/or off-site (construction site) storm water discharge locations identified, explained and denoted as either a future discharge location (i.e., any discharge location used during a future phase of the construction project, and would include any and all post-construction structural stormwater controls that will be used as discharge locations) or an existing discharge location.
- b. Provide an electronic copy (in .xls or .xlsx) of a comprehensive Microsoft Excel electronic spreadsheet of all private construction sites for April 2013, covered under the construction site runoff control element of the MS4 permit. The list must include each project name, the extent of disturbance, the date of disturbance, the type of project, the site address, the status of the inspection process, and a reason why each site is regulated by the MS4 permit, with each on-site and/or off-site (construction site) storm water discharge location identified, explained and denoted as either a future discharge location (i.e., any discharge location used during a future phase of the construction project, and would include any and all post-construction structural stormwater controls that will be used as discharge locations) or an existing discharge location.
- c. Provide an electronic copy (in .xls or .xlsx) of a comprehensive Microsoft Excel electronic spreadsheet of all public construction sites for September 2013, covered under the construction site runoff control element of the MS4 permit. The list must include each project name, the extent of disturbance, the date of disturbance, the type of project, the site address, the status of the inspection process, and a reason why each site is regulated by the MS4 permit, with each on-site and/or off-site (construction site) storm water discharge location identified, explained and denoted as either a future discharge location (i.e., any discharge location used during a future phase of the construction project, and would include

any and all post-construction structural stormwater controls that will be used as discharge locations) or an existing discharge location.

- d. Provide an electronic copy (in .xls or .xlsx) of a comprehensive Microsoft Excel electronic spreadsheet of all private construction sites for September 2013, covered under the construction site runoff control element of the MS4 permit. The list must include each project name, the extent of disturbance, the date of disturbance, the type of project, the site address, the status of the inspection process, and a reason why each site is regulated by the MS4 permit, with each on-site and/or off-site (construction site) storm water discharge location identified, explained and denoted as either a future discharge location (i.e., any discharge location used during a future phase of the construction project, and would include any and all post-construction structural stormwater controls that will be used as discharge locations) or an existing discharge location.
- e. Provide a map (as an electronic shapefile in ArcGIS 10.0), denoting the location of all of the above-listed construction sites. In addition to the map, please include all accompanying metadata in the FGDC format. The map should also include the existing discharge locations or future discharge location for each of the sites to the MS4.

## 20. Construction Site Inspections

- a. During the EPA inspection in April 2013, inspectors were provided lists of potential construction sites that discharge to the MS4 that would be good candidates for field inspection observations. Please recreate the lists provided to EPA inspectors and for each listed site, provide a detailed description of why that facility falls under the MS4 permit purview and list the destination of all on-site and/or off-site storm water discharges.
- b. List every inspector (including which Bureau he/she works in) for both public and private construction sites who are part of the City MS4 implementation staff who conduct inspections as part of the construction site runoff control element of the MS4 permit. For each inspector, clearly list whether he/she inspects private or public sites, his/her assigned area for inspection coverage, and the specific sites visited from June 2013 through Present.

## 21. Erosion Control Plans

- a. Provide complete and comprehensive erosion control plans for the following private construction sites.
  - i. Cathedral Park Village Apartments Building A, North Salem Avenue.

- ii. Stephens Creek Crossing, 2-story housing project, 6715 SW 26<sup>th</sup> Avenue, 12-115882-CO
  - iii. Elrod Industrial Site, 2225 NE Elrod Drive, 12-144312-UTL-01-CO
  - iv. Riverview Community Bank, North Peninsular Environmental Remediation Site, 9348 North Peninsular Avenue, 08-174877-SD
  - v. Walmart, 1123 North Hayden Meadows Drive, 12-112261-CO
  - vi. 6819 North Salem Avenue, 12-143595-000-00-CO
  - vii. Five-story apartment building, 3035 NE MLK Blvd, 12-144528-000-00-CO
  - viii. Apartments/condos, 6861 SW 26<sup>th</sup> Ave, 12-135589-000-00-CO
  - ix. Hotel/motel, 5414 SE Duke Street, 11-184719-000-00-CO
- b. Provide complete and comprehensive erosion control plans for the following public construction sites.
- x. NE 41<sup>st</sup> Avenue, between Knott and NE Brazee Street, sewer replacement
  - xi. EP9291, OHSU/CLSB Moody and Meade, Meade Street, permitted
  - xii. EO8626, North Burgard, North Burgard Road, interagency project
  - xiii. E10355, Portland Heights, SW Talbot Road, interagency project
  - xiv. E09163, Portland-Milwaukie Light Rail, interagency project
  - xv. E10392, Westmoreland Phase II, Westmoreland Park, CIP/ACOE managed
- c. For the lists provided above, explain how each site is covered under the construction site runoff control element of the MS4 permit, and designate (on a map) where and how the discharges from the site discharge to the MS4.

**STATEMENT OF CERTIFICATION**

I certify that the foregoing responses and information submitted were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and the accompanying information. I certify that the responses are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)